HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 975 OF 2006

1. Preetpal Singh,
   S/o Shri Malinder Singh,
   R/o Sabbarwal, Near Dodiamath, D.L. Road.
   Police Station Kotwali, Dehradun.
2. Malinder Singh,
   S/o Late Sant Singh,
   R/o Sabbarwal, Near Godiamath, D.L. Road,
   Police Station Kotwali, Dehradun.

.....Applicants

Vs.

1. State of Uttaranchal.
2. Surendra Kumar,
   S/o Shri Deewan chand,
   R/o 77, Ritha Mandi, Police Station- Kotwali,
   Dehradun. .....Respondents.

Dated: 01.12.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Ramji Srivastava, counsel for the applicants and A.G.A. for the State.

2. By the present application filed under Section 482 of the Code of Criminal Procedure, applicants have prayed for quashing of the Criminal Case No. 5281 of 206 Surendra Kumar Vs. Preetpal Singh and another under Section 420 & 406 I.P.C. pending in the Court of Additional Chief Judicial Magistrate, Dehradun.

3. Briefly sated, the respondent no. 2 has filed a complaint stating therein that the applicants have issued a cheque No. 0051862 dated 01.02.2004. for an amount of Rs. 1,37,140/- in favour of the respondent no.2. The same was dishonored on the ground of insufficient fund vide Bank Memorandum dated 04.02.2004.

4. According to the complainant-respondent no.2, a notice was given on 2nd August 2006, but in spite of the service, the applicants did not pay the amount of cheque to the respondent no.2 and hence the complaint was filed.

5. After the examination under Sections 200 and 202 of the Code of Criminal Procedure, the applicants were directed to appear vide order dated 12th October, 2006 passed by the ACJM, Dehradun.

6. Counsel for the applicants has submitted that the compliance of Sub Section (2) of Section 204 of the Cr.P.C. has not been made inasmuch as list of prosecution witnesses has not been filed.

7. As will appear from the statement under Section 200 of the Code of Criminal Procedure, the matter relates to the financial dealings, where the amount has to be deposited to the extent of Rs. 2,975/- for a period of twenty months and the same shall be recoverable to the extent of Rs. 80,000/- on the result of the lottery. Since the complaint has been lodged under Section 420/406 of the Indian Penal Code, the intention of the parties, in order to constitute the offence, has to be looked into at the trial of the case.

8. Counsel for the applicants has submitted that the cheque having been dishonoured, no complaint was instituted under section 138 of the Negotiable Instruments Act and the recovery is being sought on the complaint filed under Section 420 and 406 of the I.P.C. to the extent of Rs. 1,37,140/-

9. Counsel for the applicants has further submitted that a perusal of the complaint and the statement establishes that it is purely a civil liability and the complaint is liable to be set aside.

10. I am not expressing any opinion on the nature of the complaint and further as to whether any offence is made out under Section 420 and 406 of the Indian Penal Code and the same shall depend upon the evidence, which shall be led before the trial Court by both the parties.

11. In ***Medchl Chemicals and Pharma (P) Ltd. v. Biological E. Ltd. and others (2000) 3 SCC 269,*** the Apex Court has been observed as under:

> *"19. Considering the factual aspect of the matter, we unhesitatingly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. We, thus, without expressing any opinion on the merits of the case allow the appeal and set aside the impugned order of the high Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with the law with utmost expedition. Be it clarified however that observation as above in this judgment be not*

taken as an expression of any opinion of ours."

12. Since it is complaint case, therefore, it is relevant to quote following portion of ***Smt. Husna and others v. State of U.P. and others [2006 (56) ACC 659]:***

> *"7. The petition is finally disposed of witht eh direction to the petitioners to appear before the Court concerned within 15 days of passing of this order and if they do so, the Court will permit them to file appearance bonds to his satisfaction for their regular appearance in the case."*

13. In view of the aforesaid the applicants are directed to represent themselves before the Additional Chief Judicial Magistrate and ensure their presence by furnishing bonds to the satisfaction of the Magistrate concerned for their regular appearance in the case.

14. Subject to the observations made above, application under Section 482 Cr.P.C. is disposed of.

(Rajesh Tandon, J.)

1st December, 2006
Rathour.